

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

GERALD MULLINS,

Plaintiff,

vs.

DAVID ABSTON, et al.,

Defendants.

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Civil Action Number
02-C-311-W

MEMORANDUM OF OPINION

The magistrate judge filed a report and recommendation on November 1, 2004, recommending that Defendants' Motion for Summary Judgment be granted and this action be dismissed for Plaintiff's failure to exhaust his administrative remedies as required by 42 U.S.C. § 1997e (a). Plaintiff filed objections on November 9, 2004. (*See* Docs. 13, 17.)

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation, and the objections filed by Plaintiff, the Court is of the opinion that the magistrate judge's report is to be and is hereby ADOPTED, and the recommendation is ACCEPTED. Accordingly, Defendants' Motion for Summary Judgment is hereby GRANTED, and this action is DISMISSED for Plaintiff's failure to exhaust his administrative remedies as required by 42 U.S.C. § 1997e (a), and as moot.

A Final Judgment Granting Defendants Summary Judgment will be entered.

Done this 22nd day of November, 2004.



U.W. Clemon
Chief United States District Judge

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Thomas K. Kahn
Clerk

In Replying Give Number
Of Case and Names of Parties

NOTICE TO PRISONERS CONCERNING CIVIL APPEALS

The Prison Litigation Reform Act of 1995 (effective April 26, 1996) now **REQUIRES** that all prisoners pay the Court's \$250 docket fee plus \$5 filing fee (for a total of \$255) when appealing any civil judgment.

If you wish to appeal in a civil case that Act now **requires** that upon filing a notice of appeal you *either*:

- (1) Pay the total \$255 fee to the clerk of the district court from which this case arose; *or*
- (2) arrange to have a prison official certify to the district court from which the appeal arose the average monthly deposits and balances in your prison account for each of the six months preceding the filing of a notice of appeal.

If you proceed with option (2) above, the Act requires that the district court order you to pay an *initial partial fee* of at least 20% of the **greater** of either the average monthly deposits or of the average monthly balances shown in your prison account. The remainder of the total \$255 fee will thereafter be deducted from your prison account each month that your account balance exceeds \$10. Each such monthly deduction shall equal 20% of all deposits to your prison account during the previous month, until the total \$255 fee is paid. (If your prison account statement shows that you cannot pay even the required *initial partial fee*, your appeal may nevertheless proceed, BUT THE TOTAL \$255 FEE WILL BE ASSESSED AGAINST AND WILL BE DEDUCTED FROM FUTURE DEPOSITS TO YOUR PRISON ACCOUNT.)

Fees are not refundable, regardless of outcome, and deductions from your prison account will continue until the total \$255 fee is collected, even if an appeal is unsuccessful.

THOMAS K. KAHN
Clerk

PLRA